

WHEREAS, following briefing and an evidentiary hearing on KIND's motion for a preliminary injunction order, the Court, on June 12, 2014, issued an Opinion & Order denying said motion (the "6/12/14 Opinion & Order"); and

WHEREAS, the 6/12/14 Opinion & Order reflected the Court's rulings on the limited evidentiary record submitted (which itself was based on narrow document discovery and no depositions or other discovery tools) and the Court's preliminary, non-final findings of fact and conclusions of law and was thus not a final adjudication on the merits; and

WHEREAS, the 6/12/14 Opinion & Order focuses upon the protectability as a trade dress of six elements of the KIND packaging and not the protectability of the KIND packaging as a whole; and

WHEREAS, the 6/12/14 Opinion & Order did not address KIND's claim for trademark infringement under Section 32(1) of the Lanham Act and, therefore, did not address the validity of the two federal trademark registrations owned by KIND relating to the KIND Trade Dress: Federal Trademark Registration No. 3,882,221 and Federal Trademark Registration No. 4,097,493; and

WHEREAS, KIND has filed an interlocutory appeal from the 6/12/14 Opinion & Order in which it challenges the preliminary holdings that KIND's trade dress, as it was articulated in this action, is not inherently distinctive and has not acquired distinctiveness; and

WHEREAS, prior to KIND's commencement of this action, Clif Bar considered branding its CLIF MOJO products with the CLIF mark alone to accentuate and leverage the strength of the CLIF brand and, for business reasons independent of the outcome of this action, Clif Bar has decided to rebrand its CLIF MOJO premium snack bars and implement a packaging change; and

WHEREAS, in an effort to resolve the issues that have been raised in this case amicably, Clif Bar has shown KIND its proposed new packaging, and has made certain additional changes addressing KIND's concerns because neither party wants to create any likelihood of confusion between their respective products in the marketplace;

WHEREAS, KIND has concluded that the new packaging Clif Bar plans to adopt substantially reduces the likelihood of any alleged consumer confusion between KIND's packaging and Clif's packaging; and

WHEREAS, to avert further litigation, and without any admission of liability or wrongdoing by either party, the parties desire to amicably resolve all disputes between them regarding the Premium MOJO Trade Dress;

NOW, THEREFORE, pursuant to Fed. R. Civ. P. 41(a)(2), it is stipulated and agreed by the parties, and it is hereby ORDERED that:

1. All claims in this action shall be dismissed with prejudice, and each party shall bear its own costs and fees.

2. Within five business days after entry of this Order, KIND shall notify the Court of Appeals for the Second Circuit that this Order had been entered dismissing the action and that KIND's pending appeal is therefore moot.

STIPULATED AND AGREED this 15th day of December, 2014 by: **The Clerk of Court is directed to close this case. Any pending motions are moot.**

KIND LLC

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IT IS SO ORDERED:

Date: December 16, 2014

16. April m. Wroclaw

Honorable Kimba M. Wood
United States District Judge